

Economic Impact Statement
LSA Document #15-325

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses**Background and Summary of the Proposed Rules**

The Indiana Family and Social Services Administration (FSSA) administered a health insurance program known as the Indiana Check-Up Plan for certain individuals not otherwise eligible for Medicaid. That plan, also referred to as the Healthy Indiana Plan (HIP 1.0), existed through a federal waiver and was governed by both state and federal laws.

On July 1, 2014, FSSA submitted a waiver application for an amended plan (HIP 2.0) to the Centers for Medicare and Medicaid Services (CMS). CMS approved the waiver and issued its Special Terms and Conditions (STCs) for HIP 2.0, which became effective on February 1, 2015. HIP 2.0 expands Medicaid eligibility to include the new adult population eligible under the Patient Protection and Affordable Care Act (PPACA). The new adult population includes individuals between the ages of 19-64 with a household income at or below 138% of the federal poverty level (FPL). In addition, the waiver included the current non-disabled Medicaid population consisting of parents and caretaker relatives and those eligible for transitional medical assistance. FSSA transitioned the current participants in HIP 1.0 to HIP 2.0 without any break in coverage. HIP 1.0 and HIP 2.0 are collectively referred to herein as "HIP".

In 2007, the legislation creating HIP also authorized the optional creation of a premium assistance program to promote private market coverage for individuals with access to employer-sponsored insurance (ESI). Specifically, [IC 12-15-44.2-20](#) provides that the premium assistance program must: (i) contain eligibility requirements similar to HIP; (ii) include a health savings account component (HSA); and (iii) ensure the individual's payment to either the HSA or the premium does not exceed 5% of his or her annual household income. The Proposed Rules implement the HIP Employer Benefit Link (HIP Link), an optional defined contribution premium assistance program for HIP eligible individuals with access to an ESI that meets the HIP Link eligibility criteria. HIP Link will provide applicable individuals with the choice to participate in an ESI plan or to select the traditional HIP program for health insurance. This structure empowers Hoosiers with a greater choice and increased access to providers while also addressing potential crowd-out of private health insurance. Thus, HIP Link promotes health insurance coverage under private employer plans for individuals who may otherwise only have access to affordable health insurance through governmental initiatives.

HIP Link participants will receive premium assistance and assistance with cost sharing (including copayments, deductibles, and out-of-pocket expenses) through provision of a POWER account (POWER Account) valued at approximately \$4,000 per year. The state will fund and administer the POWER Account. The funds in the POWER Account are used to cover a portion of the employee premiums, out-of-pocket costs of the employer plan, and certain wraparound services not covered by an ESI. HIP Link participants will be prepaid a portion of his or her premium from the funds in his or her POWER Account. HIP Link participants are required to contribute 2% of his or her household income toward the cost of their ESI. The employer will deduct the full cost of the employee premium from the individual's paycheck. Once a month, the HIP Link enrolled ESI policy holder will receive a check prospectively from the state for the difference between their 2% required contributions and their required premium payments for the next month.

The STCs contain the initial parameters for HIP Link. FSSA put in place emergency rule LSA Document #15-162(ER) (Emergency Rules) to implement these parameters, which became effective on June 1, 2015, and expire on June 1, 2016, pursuant to [IC 12-15-44.2-19\(c\)](#). The Proposed Rules add [405 IAC 10-11](#) to the Indiana Administrative Code and are substantially similar to the Emergency Rules. The only substantive difference is that, under the Proposed Rules, individuals become eligible to participate in HIP Link starting at age 19 as opposed to age 21. FSSA anticipates that the Proposed Rules will take effect on or before the expiration of the Emergency Rules. Because the STCs address both HIP 2.0 and HIP Link, these programs are sometimes collectively referred to herein as "Expanded HIP".

Impact on Small Business

The following section provides responses to the requirements outlined in [IC 4-22-2.1-5](#):

1. An estimate of the number of small businesses, classified by industry sector, that will be subject to the proposed rule.

[IC 5-28-2-6](#) defines a small business as a business entity that satisfies the following requirements:

- (1) On at least fifty percent (50%) of the working days of the business entity occurring during the preceding calendar year, the business entity employed not more than one hundred fifty (150) employees.
- (2) The majority of the employees of the business entity work in Indiana.

Any employer who chooses to participate in HIP Link will be subject to the Proposed Rules. The decision of

an employer to participate in the HIP Link program is voluntary. As of September 30, 2015, six employers have been approved to participate in the HIP Link program. We have included an as of date because the number of employers approved to participate in HIP Link will continue to evolve. Currently, one of these employers meets the definition of small business set forth above but this is likely to change as more employers are approved for the HIP Link program. However, it is possible that all small businesses with qualifying insurance plans could apply to participate as employers in HIP Link.

All licensed acute hospitals and private psychiatric hospitals making payments under the hospital assessment fee (HAF) will help fund HIP Link starting in 2017. The HAF program is codified in [IC 16-21-10](#) and is designed to increase hospital inpatient and outpatient reimbursement to align with the level of payment that would be paid under the federal Medicare program. Although a small number of hospitals in Indiana may satisfy the statutory definition of small business described above, the HAF program began in 2011 and existed prior to the Proposed Rules. The Proposed Rules do not cause hospitals to be subject to the HAF program. It is also important to note that while HAF funds will be utilized to help fund HIP Link starting in 2017, hospitals and other providers will benefit from a reduction in uncompensated care beginning in 2015. Hospitals will receive commercial reimbursement rates for services provided to HIP Link enrollees, which are generally higher than HIP rates.

Insurers and providers who contract with such insurers will only be impacted by HIP Link to the extent an insurer is under contract with an employer who applies to participate in HIP Link. There are at least four insurers under contract with the approved HIP Link employers (the actual number of insurers under contract with an employer can vary depending on the employer's locations and the insurer's provider networks) but this number will continue to evolve as more employers are approved to participate in HIP Link.

As for providers in the insurers' networks, it is possible that some of them will meet the statutory definition of small business. FSSA estimates that approximately 15,000 provider entities or groups were enrolled in Medicaid in 2014, and many of these providers have contracts with insurers who have plans with employers who may participate in HIP Link. Providers will receive commercial reimbursement rates, which are generally higher than HIP rates. FSSA anticipates that more than half of these providers may qualify as small businesses. However, insurers and providers may be impacted by the Proposed Rules but are not subject to the Proposed Rules. Thus, the responses to the remaining requests contained in this statement will focus solely on employers.

2. An estimate of the average annual reporting, record keeping, and other administrative costs that small businesses will incur to comply with the proposed rule.

At the outset, it should be noted that employer participation in HIP Link is voluntary. Employers who choose to participate in HIP Link must employ Indiana residents, will be required to contribute, consistent with industry standards, at least 50% to the premium costs of the HIP Link participants, and must offer plans that meet Indiana's commercial essential health benefit benchmarks. Additionally, the Proposed Rules do not impose requirements on employers above what is already required or demand improvements of existing processes. For instance, an employer's contribution to an employee premium is standard in the health insurance industry and a 50% contribution requirement is lower than the amount that many employers currently contribute for employees. Employers who contribute more than 50% may also be able to reduce their premium contributions and realize a cost savings, since HIP Link helps their low income employees afford health insurance coverage.

Employers already have the tracking data that FSSA needs to verify a member's continued eligibility. The HIP Link program is designed such that employers are taking actions that are similar to what they already do. HIP Link does not require employers to conduct any outreach with respect to employees. An employer will apply to participate in HIP Link through the online HIP Link portal. An employer who participates in HIP Link will be required to confirm that potential HIP Link participants are employed by that employer, that such participants are enrolled in an ESI, and the monthly premium amounts for HIP Link participants, but FSSA anticipates that any additional costs incurred by employers will be de minimis to add this function as part of the typical operations of an employer's human resources department. The Proposed Rules do not require an employer to make any changes to its existing enrollment process.

3. An estimate of the total annual economic impact that compliance will have on small businesses subject to the rule.

Small business employer participation in HIP Link is voluntary. An increase in the number of employees in an ESI may help a small business employer meet industry and marketplace participation rates or lower group premium rates. Increased ESI participation may also increase the number of employees who are able to participate in wellness programs, which could lead to better workplace employee productivity. Also, by being listed as an approved HIP Link employer, the employer may see an expanded employee base and increase employee retention. Since HIP Link makes ESI coverage more affordable for low income individuals, employers that contribute more than 50% of premiums may be able to reduce premium contributions and realize a cost savings. All employer contributions for employee health insurance are pre-tax. Finally, small employers may have access to a federal tax credit as a result of HIP Link enrollees in an ESI.

As described in the response to section 2, the requirements of HIP Link for employers are standard industry practice already in place for employers who provide employees with an ESI. In many instances, employers contribute more than 50% of premiums for employees enrolled in an ESI. FSSA estimates that a typical average annual employer premium contribution for an individual HIP Link insured during a demonstration period, which runs from February 1, 2015, to December 31, 2017, will be approximately \$4,100. FSSA estimates that the Proposed Rules will be fully implemented upon the effective date of the Proposed Rules, which is anticipated to be no later than June 1, 2016. Thus, the first 12 month period after the Proposed Rules will be fully implemented would end no later than June 1, 2017. Although the demonstration period does not line up exactly with the date estimated to be 12 months after promulgation of the Proposed Rules, the projections provided by FSSA cover a period longer than is required.

As of September 30, 2015, six employers have been approved to take advantage of the HIP Link program. Currently, one of these six employers meets the definition of a small business, and four employees of said business are potentially eligible for HIP Link. Thus, up to 1/6 of employers utilizing HIP Link may be small businesses. FSSA estimates that the Proposed Rules could potentially offer assistance to purchase employer sponsored health insurance to approximately 86,000 HIP eligible individuals during a demonstration period, which runs from February 1, 2015, to December 31, 2017, by enabling them to afford to participate in an ESI. Assuming an equal amount of employee participation among both small and large businesses that utilize HIP Link, the total amount of small business HIP Link employees could range from approximately 400 individuals (4/150 multiplied by 1/6 multiplied by 86,000) up to approximately 14,000 individuals (1/6 multiplied by 86,000). Therefore, small business employers could pay annual premiums of \$4,100 for a range of 400 to 14,000 employees.

However, the total economic impact on small business employers must also take into account any savings that a small business employer may realize if the employer's premium contribution for these employees is lower as a result of an employee enrolling in HIP Link. Further, as noted above, employers as an industry standard are already contributing at least 50% of the employee's premium costs, so the annual premium costs of \$4,100 are likely not new or additional expenses for said employers. FSSA emphasizes that the above figures are only estimates due to the difficulty of predicting how many small business employers may apply, how many employees of such small business employers may be HIP eligible, and whether the payment of HIP Link premiums will result in a savings for such employer.

4. A statement justifying any requirement or cost that is imposed by the proposed rule and not expressly required by law. The statement must reference any data, studies, or analyses relied upon by the agency in determining that imposition of the requirement or cost is necessary.

The Proposed Rules implement the HIP Link requirements as set forth in the STCs. The STCs are a federal mandate for the requirements in the Proposed Rules, and such requirements are necessary for the creation of affordable health insurance in the private market for low income individuals. Participation by small business employers in HIP Link is voluntary. The HIP Link program is designed such that employers are taking actions that are similar to what they already do. Thus, the HIP Link program does not impose any additional costs on small business employers.

5. Any regulatory flexibility analysis that considers any less intrusive or less costly alternative methods of achieving the same purpose.

The primary purpose of the Proposed Rules is to enable HIP eligible individuals to afford to participate in their ESIs. Currently, there is no private market alternative for individuals who cannot afford insurance coverage under an ESI. Any participation by small business employers is voluntary. FSSA does not anticipate that small business employers will incur any additional costs to participate in the HIP Link program.

Other factors considered:

A. Establishment of less stringent compliance or reporting requirements for small businesses.

As noted in section 2 above, participating employers must confirm that potential HIP Link participants are employed by that employer, that such participants are enrolled in an ESI, and the monthly premium amounts for HIP Link participants. Regular monitoring and reporting are necessary because of the frequency of job turnover. However, any compliance or reporting requirements for small business employers that result from the Proposed Rules are reporting requirements that small business employers already execute for other employees enrolled in an ESI. Thus, FSSA did not consider lesser requirements for small businesses. Additionally, all participation for small businesses is voluntary.

B. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

As described above, FSSA must be able to monitor the continued employment of HIP Link members on a regular basis. Any compliance or reporting requirements for small business employers that result from the Proposed Rules are reporting requirements that small business employers already execute for other employees enrolled in an ESI. Thus, FSSA did not consider less stringent deadlines for small businesses. Additionally, all participation for small businesses is voluntary.

C. Consolidation or simplification of compliance or reporting requirements for small businesses.

FSSA requires employers to report only the minimum essential data regarding their employees using systems and reports already available to the employer. Any compliance or reporting requirements for small business employers that result from the Proposed Rules are reporting requirements that small business employers already execute for other employees enrolled in an ESI. Thus, FSSA did not consider simplification of the requirements for small businesses. Additionally, all participation for small businesses is voluntary.

D. Establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.

The operational standards for small business employers that result from the Proposed Rules are standards that small business employers already adhere to for other employees enrolled in an ESI. Thus, FSSA did not consider different standards for small businesses. Additionally, all participation for small businesses is voluntary.

E. Exemption of small businesses from part or all of the requirements or costs imposed by the rule.

Under the STCs, employers are subject to the same requirements regardless of size. Thus, FSSA is not able to exempt small business providers from these requirements. Additionally, all participation for small businesses is voluntary.

If there are any programmatic or fiscal questions, please contact Sara Hall at (317) 234-8030 or at sara.hall@fssa.in.gov. Questions regarding any other aspect of the proposed rule should also be addressed to Leslie Huckleberry at (317) 232-1246 or leslie.huckleberry@fssa.in.gov.

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